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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,146	11/05/2001	Hisayoshi Ito	213630US3XPCT	2530
22850 75	590 10/29/2004		EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET			SHERRER, CURTIS EDWARD	
ALEXANDRIA			ART UNIT	PAPER NUMBER
			1761	
			DATE MAILED: 10/29/2004	4

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)					
	09/926,146	ITO ET AL.	_				
Office Action Summary	Examiner	Art Unit					
	Curtis E. Sherrer, Esq.	1761					
The MAILING DATE of this communication Period for Reply		the correspondence addre	SS				
A SHORTENED STATUTORY PERIOD FOR R THE MAILING DATE OF THIS COMMUNICATION  - Extensions of time may be available under the provisions of 37 CI after SIX (6) MONTHS from the mailing date of this communication  - If the period for reply specified above is less than thirty (30) days,  - If NO period for reply is specified above, the maximum statutory p  - Failure to reply within the set or extended period for reply will, by any reply received by the Office later than three months after the earned patent term adjustment. See 37 CFR 1.704(b).  Status  1) Responsive to communication(s) filled on 2  2a) This action is FINAL. 2b)  3) Since this application is in condition for allegations.	ON. FR 1.136(a). In no event, however, may a rep no. a reply within the statutory minimum of thirty (eriod will apply and will expire SIX (6) MONTH statute, cause the application to become ABAI mailing date of this communication, even if time 17/26/04. This action is non-final. Owance except for formal matter	oly be timely filed (30) days will be considered timely. HS from the mailing date of this commuNDONED (35 U.S.C. § 133). The street of the may reduce any TS, prosecution as to the me					
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.							
Disposition of Claims							
4) Claim(s) 1-7,9-13 and 16-19 is/are pending 4a) Of the above claim(s) is/are with 5) Claim(s) is/are allowed.  6) Claim(s) 1-7,9-13 and 16-19 is/are rejected 7) Claim(s) is/are objected to.  8) Claim(s) are subject to restriction as	ndrawn from consideration.						
Application Papers							
9) The specification is objected to by the Exam							
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.							
Priority under 35 U.S.C. § 119							
12) Acknowledgment is made of a claim for fore a) All b) Some * c) None of:  1. Certified copies of the priority docum 2. Certified copies of the priority docum 3. Copies of the certified copies of the papplication from the International But * See the attached detailed Office action for a	nents have been received. The sents have been received in Apploriority documents have been received (PCT Rule 17.2(a)).	lication No ceived in this National Stag	l <b>e</b>				
Attachment(s)							
<ol> <li>Notice of References Cited (PTO-892)</li> <li>Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>Information Disclosure Statement(s) (PTO-1449 or PTO/SB/Paper No(s)/Mail Date</li> </ol>		mary (PTO-413) ail Date mal Patent Application (PTO-152)					

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### **DETAILED ACTION**

### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 9, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Mogi (Jap. Pat. No. 10180228).

Mogi teaches the use of a fermentation apparatus that has a stirring impeller that extends between 60-90 % of the vessel's inner diameter and a conical bottom. (See Figure 1).

Applicants' latest comments refer to the claim language directed to the depth of the yeast slurry that is exposed to the impellor. Because this is merely an intended use of the apparatus and the claim does not positively claim the presence of yeast, this language is given no patentable weight. Nevertheless, it appears from measuring the vessel and the top impellor, comes to a height of 75% of the vessel. Further, because the vessel would not be filled to the top, the height of the impellor would clearly extend beyond 70%.

With regard to the limitation directed to no hole or opening, it is considered after reviewing applicants' drawings that this limitation refers to individual (impellor blades) rotation bodies. It is noted that the upper impellor blade of applicants, while it may extend to 70% of the level of the yeast, does not extend to 60% of the vessel's width (only the lower impellor does).

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Therefore, the claims refer to multiple impellors that can have various width's and heights, as does the apparatus of Mogi.

## Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4-7, 10-13, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grylls *et al.* (U.S. Pat. No. 4,188,407)("Grylls") in view of Mogi.

Grylls teaches the production of active dried yeast whereby yeast is placed in a stirred tank and a rotor blade "that moves around the periphery of the bed forcing the yeast towards the center of the bed. Thus a preferred apparatus comprises a slowly rotating (e.g. 2 to 0 or 100, preferably 10 to 20 rpm) rotor blade that sweeps the periphery of the bed and one or more fast rotating blades." (Col. 5, lines 17-30). While the phrase "periphery of the bed" indicates that the blade extends to the walls of the tank, Grylls does not literally teach the dimensions of the rotor blade or that the blades are vertical with no holes or the use of an inverted conical bottom.

Mogi teaches the use of a fermentor, as disclosed above. It would have been obvious to those of ordinary skill in the art to utilize the fermentor of Mogi in the process of Grylls because the Mogi fermentor allows for the easy exit of material out the bottom and the more complete stirring of the fermenting material.

### Response to Arguments

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Applicants' arguments with respect to claims 1-7, 9-13, and 16-19 have been considered but are most in view of the new ground(s) of rejection.

#### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Curtis E. Sherrer, Esq. Primary Examiner

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